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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 27 of the	)	WT Docket No. 98-136
Commission's Rules to Revise	)	
Rules for Service in the 2.3 GHz	)	
Band and to Include Licensing	)	
of Services in the 47 GHz Band	)	

To: The Commission

JOINT COMMENTS OF
COLOMA WIRELESS, L.L.C. AND TRIAD CELLULAR CORPORATION

Coloma Wireless, L.L.C. ("Coloma") and Triad Cellular Corporation ("Triad"), by their attorney, hereby jointly submit their comments in response to the *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding. The following is respectfully shown.

I. Preliminary Statement

Coloma and Triad each hold licenses from the Commission authorizing the provision of Wireless Communications Services ("WCS") under Part 27 of the Commission's Rules. Since acquiring their licenses at auction in April, 1997, Coloma and Triad have made substantial commitments to developing commercially viable service offerings in the 2.3 GHz band. Each company has been an active participant in the WCS Forum, an organization of WCS industry participants, and has had extensive dealings with equipment manufacturers and others in an effort to contribute to the growth of this new industry. Coloma and Triad file these comments for the purpose of addressing the Commission's proposals to change certain Part 27 rules that affect their interest as Commission licensees.

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II. Coloma and Triad Support a Flexible "Safe Harbor" for Part 27 Licensees

Section 27.14(a) of the Commission's Rules requires WCS licensees to demonstrate that they are putting their spectrum to beneficial use by providing "substantial service" within their service area within ten years of being licensed. The current rule defines "substantial service" but does not contain specific guidance about what level of service may be sufficient to show compliance.

In the *NPRM*, the Commission proposes to amend Section 27.14(a) by adding specific "safe harbor" provisions. A licensee demonstrating that it has satisfied one of these provisions will be eligible for license renewal. *NPRM*, para. 89. Coloma and Triad support these provisions and agree that they will offer certainty regarding compliance with their obligations as licensees. Coloma and Triad also support the proposal to review compliance showings on a case-by-case basis, and believe that this should be codified in Section 27.14 of the rules.

III. Forbearance Is Appropriate for All Part 27 Licensees

In the *NPRM*, the Commission seeks comment on whether to exercise its authority under Section 10 of the Communications Act of 1934, as amended (the "Act"), and forbear from certain provisions of Title II of the Act as they may apply to common carriers that offer fixed services under Part 27, to the same extent the Commission has exercised that authority to forbear with respect to CMRS licensees. Although the principal focus of the Commission's inquiry is services provided in the 47 GHz band, the *NPRM* also asks if forbearance is appropriate for WCS. *NPRM*, paras. 107-109.

Coloma and Triad believe that to the extent Part 27 licensees have comparable

service capabilities, they should be treated no differently under the Commission's forbearance policies. Consequently, forbearance, if applied to 47 GHz licensees, also should apply to 2.3 GHz licensees.

The statutory conditions for forbearance are satisfied. Enforcement of the provisions cited in the *NPRM* -- which require common carriers to file contracts of service, to seek authority for interlocking directors, to file applications for new facilities or discontinuance of existing facilities, and to file tariffs -- is not necessary either to ensure that Part 27 licensees will not unjustly or unreasonably discriminate or to protect consumers. Furthermore, forbearance will result in Part 27 licensees being subject to the regulatory treatment that is comparable to CMRS providers. This will promote competition among all fixed and wireless service licensees, and serve the public interest.

IV. Section 27.58 of the Rules Should Be Eliminated

In allocating spectrum for WCS, the Commission sought to allow the widest range of services possible. Among the permissible services in the band is satellite digital audio radio service ("DARS"). Coloma and Triad believe that DARS is a viable use of WCS spectrum. In order to preserve the possibility of a DARS deployment in the WCS band, Coloma and Triad recommend that Section 27.58 of the Commission's rules be deleted. The EIRP limits and out-of-band emissions limits defined in Sections 27.50 and 27.53 of the rules provide adequate protection for neighboring bands. Deleting Section 27.58 also will encourage a more efficient approach to spectral management and enables deployment of services such as DARS without undue burden.[1/]

1/ Advancing the sunset provision in the rule to January 1, 2000 also would be an acceptable alternative.

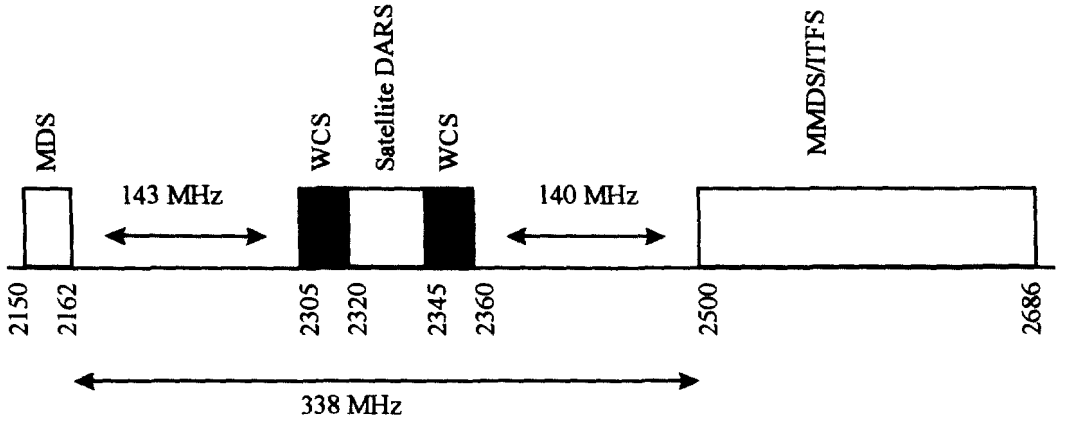
When it adopted technical rules for the 2.3 GHz spectrum, however, the Commission included certain provisions that have the potential to restrict the ability of WCS licensees to offer DARS. Specifically, Section 27.58 of the Commission's rules requires WCS licensees to bear financial responsibility for solving interference problems to MDS/ITFS downconverters provided certain conditions are met. The triggering criteria include a limit on the in-band EIRP of the WCS transmitter and a power flux density (PFD) contour within which the MDS/ITFS receiver must reside. This rule could substantially impact the terrestrial repeaters that might complement a satellite DARS system, and thus does not serve the public interest.

Section 27.58 rewards spectral inefficiencies, because it restricts the range of potential services in bands well outside of the MDS/ITFS bands. Figure 1, below, illustrates the relative spectral locations of the MDS/ITFS and WCS bands. The lower edge of the WCS band is 143 MHz above the nearest segment of the MDS band and the upper edge of the WCS band is 140 MHz below the nearest segment of the MMDS/ITFS. The combined MDS/MMDS/ITFS bands represent a total of 198 MHz of spectrum. In total, there is 338 MHz of spectrum between the disjoint segments of the MDS/MMDS/ITFS bands. Based on the MDS/ITFS downconverter design that has been described, they require EIRP protection over the intermediate 338 MHz of spectrum in order to provide service to a total of 198 MHz of spectrum. The band requiring protection is 170% as large as the band being serviced.

Furthermore, the MDS industry is undergoing a shift in emphasis to two-way wireless Internet access. Thus, the rule protects obsolete equipment and service configurations

rapidly being swept aside by the MDS industry, and impairs the development of innovative WCS services.

Since the level of protection provided by Section 27.58 is overly broad and affects the range and quality of services that can be provided in the WCS band, the rule does not promote efficient spectrum allocation or use. It is unlikely that during the MDS/ITFS licensing process potential users ever had an expectation that they could expect such extreme protection so far out of their own band, and it would have been logical to assume that other portions of the 2 GHz band eventually would be licensed for other services — as indeed they were when the Commission proceeded with the WCS allocation and auctioned licenses for the 2.3 GHz band. The technology required for an MDS/ITFS downconverter to accommodate signals at the EIRP limits described in Section 27.50 in the WCS band is straightforward. SDARS licensees in non-WCS spectrum face a similar situation, as they are required to coexist with each other's terrestrial repeaters. Their receivers, which also are intended to be low-cost consumer products, face more significant dynamic range and adjacent channel interference issues than those presented by WCS transmitters to the MDS/ITFS receivers.



Moreover, the EIRP limit specified in Section 27.58 is unnecessarily low and will be exceeded by virtually every DARS terrestrial repeater. As currently stated in Section 27.58, WCS transmitters are burdened with ensuring there is no interference to MDS/ITFS receivers when the transmitter EIRP exceeds 50 W. Section 27.50 already limits WCS fixed transmitters in in-band EIRP to 2000 W, and Section 27.53 imposes stringent out-of-band emissions requirements. Section 27.58 imposes an additional, unnecessary responsibility whenever the transmitter EIRP is greater than 50 W.[2/] Thus, the spectrally efficient system is forced to bear the financial responsibility for solving interference problems (even when it is meeting its tight EIRP and out-of-band emissions operating constraints) with spectrally inefficient systems. MDS/ITFS stations routinely transmit greater than 50 W EIRP, and yet are subject to no comparable requirement that they bear financial responsibility for other systems that may be using neighboring MMDS/ITFS channels.

Finally, Section 27.58 is inconsistent with rules governing the 2320-2345 MHz band that also affect MDS/ITFS receivers. Even though terrestrial repeaters in the 2320-2345 MHz band pose an identical interference threat to MDS/ITFS receivers as do WCS transmitters, no rule similar to Section 27.58 is imposed upon them. Consequently, singling out WCS licensees to fix interference problems to MDS/ITFS downconverters will not truly solve the problem and represents an inconsistent standard.

2/ In a DARS application, virtually every terrestrial repeater will transmit with greater than 50 W EIRP in order to provide effective signals to mobile users in urban environments. To operate below the 50 W EIRP limit would require substantially more transmitters to cover the same area, greatly increasing system deployment costs.

WHEREFORE, the foregoing premises duly considered, Coloma and Triad respectfully request that the Commission amend its Part 27 rules consistent with the foregoing.

Respectfully submitted,

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